

Claim Number: 1304581

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evidence of foundation deflection and that investigation revealed that the foundation deflection resulted from heave proximately caused by a number of sources. They state that the proximate cause was negligent construction, failure to design and build the foundation adequately to the high volatile soil, and allege that each Defendant caused and/or contributed to the foundation failure, failure of construction supervision, failure of engineering design in relation to this soil, failure to adequately supervise construction relative to the foundation, failure to adequately supervise to construct the drainage areas, and generally negligent construction which resulted in water leaks and the heave effect upon the soil. They also complain that the quality of construction throughout the house fell well below Community Standards and that various defects currently exist that may lead or have lead the house becoming inhabitable in whole or in part.

Plaintiffs state that they engaged NSE to plan and oversee the construction of the foundation. The house was built with a pier and beam foundation and NSE's particular responsibility was to assure that the foundation was planned and designed according to the codes and constructed according to the drawings and plans for the house, and adequate to the terrain and sub-terrain. They state that Skollar and NSE planned the structural, load-bearing foundation portion of the construction and that their plan and drawings was reliant on a soil test report. They claim that the foundation was negligently and inadequately designed and constructed.

They complain that the construction defects, structural and non-structural include without limitation to the following:

- Cracked sheetrock throughout the interior structure; and/or
- Entry, exit, and/or interior doors have been unable to have secure closure, if they close at all; and/or
- Grading, compacting and/or quality and content of site and soil preparation were improper and allowed for ineffective drainage; and/or
- Site preparation and grading did not provide positive drainage on and about the premises; and/or
- Brick cracked and/or separating; and/or
- Foundation was cracked and/or sloped, and/or deflected, and substantially out of level.

The claims against BLACK DIAMOND's partners, as individuals, are for negligence and breach of contract. They complain that there was damage to their property and belongings in the course of construction and that BLACK DIAMOND breached the duty by causing actual physical damage to their property during the construction including but not limited to damage to the foundation, windows, walls, ceilings, floors, doors, and damage to the items purchased and paid for by them that were physically damaged by BLACK DIAMOND.

Further, they state that BLACK DIAMOND's acts both in Common Law Negligence and negligent performance of the Contract is a proximate cause of damage to the property and their possessions. These include but are not limited to:

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- Inadequate design, supervision and construction of the foundation; and
- Inadequate supervision by the pool and landscaping/drainage installation;

The remainder of the claims are made against the other Defendants.

DAMAGES:

- Loss of the benefit of the bargain;
- Diminution in value;
- Loss of Use;
- Loss of quiet enjoyment;
- Exemplary damages;
- Cost of repair;
- Additional damages – Violations of DTPA;
- Attorneys and consulting fees; and
- Calculation of damages.

The last damage “Calculation of Damages” states all unliquidated damages are developed and disclosed in an expert report. **Please provide this report.**

The AAA Pleading is essentially the same as the State Pleadings except BLACK DIAMOND is a Defendant.

With respect to the general liability policy, we refer you to the Insuring Agreement from commercial general liability Coverage Form CG0001 (12/04) which is quoted verbatim in the Appendix accompanying this letter.

As indicated in the Insuring Agreement, in order for a claim to be covered under the general liability policy, there must first be an “Occurrence” within the policy period that results in “Bodily injury” or “Property damage” as those terms are defined by the policy.

Even if the claim were to fall within the definitions and policy period, we wish to advise that there is no coverage for damage, defect, impairment, flaw or inadequacy of your work or product necessitating the repair, removal, replacement, recall, as provided under Coverage A, exclusions j.(5), j.(6), m. and n. Exclusion a. excludes expected or intended injury, b. excludes contractual liability, f. (2) excludes pollution damages, j. (3) excludes personal property in your care, custody and control, and k. excludes damage to your product.

Further, the policy contains exclusionary endorsement CG2294 1001 which excludes damage to work performed by subcontractors on your behalf, and ML1217 0401 which excludes fungus, mildew and mold damage.

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We also wish to advise you of your duties under the policy with respects to notice of claim, occurrence:

#### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

##### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

Consequently, to the extent that Mid-Continent Casualty Company was prejudiced by late notice, coverage may not apply.

We have provided you with the Insuring Agreement, policy definitions, policy exclusions and the exclusionary endorsement referenced in this letter in the Appendix accompanying this letter.

The above analysis constitutes our best effort to inform you of all of the factors of which we are currently aware that may affect our ultimate responsibility to provide coverage for the allegations made by the Plaintiffs. By informing you of these issues, we are not waiving any rights under any policy of insurance issued by Mid-Continent Casualty Company, or under any State or Common Law. We expressly reserve all such rights. **A final determination of coverage under the policy has not been rendered.**

We also reserve the right to rely on other policy definitions, limitations, and/or exclusions, in the event that continued investigation gives rise to other allegations or facts which are not covered

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under the policy. Further, investigation of this claim, under reservation of rights, does not waive any rights or conditions under the policy. All of Mid-Continent Casualty Company's rights are fully reserved.

We request that you provide a completed Builder's Questionnaire, blank copy attached, and all correspondence from the Plaintiffs respects complaints of construction defects and damages during and after the construction and your responses thereto, and the documents shown in bold in this letter.

Because of the coverage issues represented in this letter, you may, at your expense, retain an attorney to represent you for these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert W. Pileggi', with a stylized flourish at the end.

Robert W. Pileggi  
Senior Claim Specialist

CC: Hotchkiss Insurance Agency, Inc.  
13105 NW Freeway, Suite 850  
Houston, TX 77040-6312

Bonner S. Ball  
Black Diamond Builders Corp.  
750 Bearing, Suite 130  
Houston, TX 77057

Rallin M. Welch  
Black Diamond Builders Corp.  
750 Bearing, Suite 130  
Houston, TX 77057

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APPENDIXINSURING AGREEMENT

## SECTION I – COVERAGES

## COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

## 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

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**POLICY DEFINITIONS**

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.

CG 24 26 07 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****AMENDMENT OF INSURED CONTRACT DEFINITION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**Paragraph 9. of the **Definitions** Section is replaced by the following:

9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

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- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - (1) Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
 Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
  - b. Does not include "bodily injury" or "property damage" arising out of:

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- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

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**a. Means:**

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

**POLICY EXCLUSIONS**

This insurance does not apply to:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**f. Pollution**

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

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RESIDENTIAL CONTRACTOR EXTENSION A  
HOMEBUILDERS DIVISION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion j. of COVERAGE A (SECTION I) is hereby replaced by the following:

This insurance does not apply to:

- j. "Property damage" to:
  - (3) Property in your care, custody and control, but this exclusion does not apply to liability assumed under a sidetrack agreement;
  - (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arise out of those operations. This exclusion does not apply to liability assumed under a sidetrack agreement; or
  - (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it. This exclusion does not apply to liability assumed under a sidetrack agreement or to "property damage" included in the "products-completed operations hazard".

All other conditions remain unchanged.

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**EXCLUSIONARY ENDORSEMENTS**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION – DAMAGE TO WORK PERFORMED BY  
SUBCONTRACTORS ON YOUR BEHALF**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion I. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**I. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

**ML 12 17 11 04**

**FUNGUS, MILDEW AND MOLD EXCLUSION**

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal and advertising injury" or "medical payments" arising out of, resulting from, caused by, contributed to, attributed to, or in any way related to any fungus, mildew, mold or resulting allergens;
2. Any costs or expenses associated, in any way, with the abatement, mitigation, remediation, containment, detoxification, neutralization, monitoring, removal, disposal or any obligation to investigate or assess the presence or effects of any fungus, mildew, mold or resulting allergens; or
3. Any obligation to share with or repay any person, organization or entity, related in any way to items 1 and 2.

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# **BUILDER QUESTIONNAIRE** (Answer all questions)

Please complete the following information and return it to the Mid-Continent Group as soon as possible. Please also include the following documents as attachments:

- A COPY OF THE CONTRACT BETWEEN THE BUILDER AND HOMEOWNER
- A COPY OF THE PUNCH LIST
- ALL SOILS AND ENGINEERS REPORTS IF FOUNDATION INVOLVED
- ALL CERTIFICATES OF INSURANCE FOR SUB-CONTRACTORS INVOLVED
- ALL CONTRACTS WITH SUB-CONTRACTORS INVOLVED IN CLAIM
- SUBSTANTIAL COMPLETION CERTIFICATE

*Note: If this is not a foundation-related claim, disregard all questions referring to that issue.*

Property Location: \_\_\_\_\_

Name of Contracting Entity: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

## 1. DESCRIBE HOME FOUNDATION TYPE AND ROOF FRAMING:

FOUNDATION TYPE:    ☐ Slab on Grade                      ☐ Block  
                                  ☐ Pier and Beam                      ☐ Crawl Space  
                                  ☐ Basement                                      ☐ Poured

ROOF FRAMING:            ☐ Truss                                      ☐ Conventional \_\_\_\_\_

If Truss, who was the manufacturer? \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## 2. DESCRIBE THE EXTERNAL INSULATION FINISHING SYSTEM "EIFS" USED ON THE HOME:

### INSTALLER

Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Insurance Certificate:            yes ☐                      no ☐ (if yes, please attach)

Written Contract:                      yes ☐                      no ☐ (if yes, please attach)

### "EIFS" MANUFACTURER:

Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Insurance Certificate:            yes ☐                      no ☐ (if yes, please attach)

Written Contract:                      yes ☐                      no ☐ (if yes, please attach)

*Builder Questionnaire.dat*

## 3. WERE YOU THE? ☐ General Contractor – (Subs contracted with you)

☐ Construction Manager (Subs contracted with homeowner)



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## 4. ENGINEER:

Nature of involvement, i.e. soil, slab, structural, piers, etc. \_\_\_\_\_

NAME: \_\_\_\_\_

Contact name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Insurance certificate:    yes ☐                      no ☐    (if yes, please attach)

Written contract:        yes ☐                      no ☐    (if yes, please attach)

## 5. ARCHITECT:

☐ Homeowner's                      ☐ Builder's

NAME: \_\_\_\_\_

Contact name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Insurance certificate:    yes ☐                      no ☐    (if yes, please attach)

Written contract:        yes ☐                      no ☐    (if yes, please attach)

## 6. Were there any changes from engineer and/or architect design?

If yes, What were the changes?

7. Was foundation engineered?    yes ☐                      no ☐

If yes, what is the engineers' name, address and telephone number?

8. Were there any problems during construction:                      yes ☐                      no ☐

If yes, please explain:

## 9. DEVELOPER

NAME: \_\_\_\_\_

Address: \_\_\_\_\_

## 10. SUB-CONTRACTORS INVOLVED IN THE ALLEGED DEFECTS CLAIMED:

NAME: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Insurance Certificate: ☐ Yes ☐ No (If yes, please attach)  
Written Contract: ☐ Yes ☐ No If yes, please attach)  
Trade Involved: \_\_\_\_\_

NAME: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Insurance Certificate: ☐ Yes ☐ No (If yes, please attach)  
Written Contract: ☐ Yes ☐ No If yes, please attach)  
Trade Involved: \_\_\_\_\_

NAME: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Insurance Certificate: ☐ Yes ☐ No (If yes, please attach)  
Written Contract: ☐ Yes ☐ No If yes, please attach)  
Trade Involved: \_\_\_\_\_

NAME: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Insurance Certificate: ☐ Yes ☐ No (If yes, please attach)  
Written Contract: ☐ Yes ☐ No If yes, please attach)  
Trade Involved: \_\_\_\_\_

NAME: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Insurance Certificate: ☐ Yes ☐ No (If yes, please attach)  
Written Contract: ☐ Yes ☐ No If yes, please attach)  
Trade Involved: \_\_\_\_\_

NAME: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Insurance Certificate: ☐ Yes ☐ No (If yes, please attach)  
Written Contract: ☐ Yes ☐ No If yes, please attach)  
Trade Involved: \_\_\_\_\_

11. Was there anything unusual about the property or drainage? \_\_\_\_\_

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12. Were final as-built elevations obtained? ☐ Yes ☐ No

13. Who did the final grading of the lot for moisture control around the finished foundation? \_\_\_\_\_

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14. Did the homeowner notify you of any defects during your warranty period? If so, what repairs were made? Were sub-contractors involved with the repairs? Who were they? \_\_\_\_\_

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15. Were you contacted about the current complaint prior to the claim being made?

☐ Yes ☐ No If yes, when and by whom were you contacted? \_\_\_\_\_

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16. Have there been any unusual weather conditions in the area that may have caused or contributed to the problems being complained of? \_\_\_\_\_

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17. Who installed slab? Foundation? footings?

NAME: \_\_\_\_\_

Contact name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Insurance certificate: yes ☐ no ☐ (if yes, please attach)

Written contract: yes ☐ no ☐ (if yes, please attach)

18. Who tensioned cables? (if applicable)

Page 5

NAME: \_\_\_\_\_  
 Contact name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone number: \_\_\_\_\_  
 Insurance certificate: yes ☐ no ☐ (if yes, please attach)  
 Written contract: yes ☐ no ☐ (if yes, please attach)

19. Were piers used in the original construction? ☐ Yes ☐ No  
 If yes, who installed them?

NAME: \_\_\_\_\_  
 Contact name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone number: \_\_\_\_\_  
 Insurance certificate: yes ☐ no ☐ (if yes, please attach)  
 Written contract: yes ☐ no ☐ (if yes, please attach)

Attach a copy of pier location diagram

20. Did your construction activities include the installation of an irrigation system?  
☐ Yes ☐ No If yes, who installed it?

NAME: \_\_\_\_\_  
 Contact name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone number: \_\_\_\_\_  
 Insurance certificate: yes ☐ no ☐ (if yes, please attach)  
 Written contract: yes ☐ no ☐ (if yes, please attach)

21. Did the homeowner have an irrigation system installed at a later date?  
☐ Yes ☐ No

NAME: \_\_\_\_\_  
 Contact name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone number: \_\_\_\_\_  
 Insurance certificate: yes ☐ no ☐ (if yes, please attach)  
 Written contract: yes ☐ no ☐ (if yes, please attach)

22. Does the home have a pool? ☐ Yes ☐ No  
 If yes, was it installed under contract? ☐ Yes ☐ No  
 If yes, provide pool contractor information below:

NAME: \_\_\_\_\_  
 Contact name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone number: \_\_\_\_\_  
 Insurance certificate: yes ☐ no ☐ (if yes, please attach)  
 Written contract: yes ☐ no ☐ (if yes, please attach)

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23. Do you know if the homeowner has made any changes to the home and/or property?  
☐ Yes ☐ No If yes, what was done and by whom? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. When was the original construction started? \_\_\_\_\_

25. When was it completed?  
\_\_\_\_\_

26. What was the move in date? \_\_\_\_\_

27. When was the final walk through? \_\_\_\_\_

28. What was the "closing date"? Builder \_\_\_\_\_  
Date \_\_\_\_\_

29. What was the final price of the home? \_\_\_\_\_

30. Was a home warranty policy issued? yes ☐ no ☐  
If yes, by whom and have they been notified of the claim by the homeowner? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

31. Please provide any other information that you have that will be beneficial to our investigation? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As you are aware, applicable law, including but not limited to the Residential Construction Liability Act ("RCLA") or the Texas Deceptive Trade-Consumer Protection Act ("DTPA") contains certain deadlines for responding to complaints regarding construction defects. A failure to adhere to these deadlines may increase the types of damages and amounts of damages a claimant may recover.

Prejudice, to the insurer caused by the homebuilders failure to adhere to RCLA, or DTPA or other deadlines may constitute a breach of conditions of the policy and may affect the coverage afforded under the policy.

\*\*\*LASTLY, PLEASE PUT ON NOTICE ANY OTHER INSURANCE CARRIER THAT MAY BE INVOLVED PRIOR TO OR AFTER MID-CONTINENT GROUP'S, GREAT AMERICAN INSURANCE COMPANY, GREAT AMERICAN LLOYDS INSURANCE POLICY YEARS.



**M I D - C O N T I N E N T**

Mid-Continent Casualty Company Δ Mid-Continent Assurance Company Δ Oklahoma Surety Company

P.O. Box 2927 Tulsa, OK 74101-2927 (972) 671-1070 Toll Free (800) 841-3218  
FAX (918) 586-0845 claims@mcg-ins.com

May 22, 2012

**CERTIFIED MAIL# 7010 0290 0000 9213 3591**  
**RETURN RECEIPT REQUESTED**  
And Regular U.S.Mail

Ms. Bonner Ball  
Black Diamond Builders Corp.  
750 Bering, Suite 130  
Houston, TX 77057

**CERTIFIED MAIL# 7010 0290 0000 9213 3607**  
**RETURN RECEIPT REQUESTED**  
And Regular U.S.Mail

David W. Medack, Esq.  
Heard & Medack P.C.  
9494 Southwest Freeway, Suite 700  
Houston, TX 77074

RE: Claim Number: 1304123  
Insured : Black Diamond Builders Corp.  
Date of Loss : 07/06/06 (administrative)  
Claimant : Grier and Camille Patton  
Loss Location : 5353 Sugar Hill, Houston, TX 77056

Dear Ms. Ball and Mr. Medack:

Mid-Continent Casualty Company insured Black Diamond Builder's Corp. under policy number 04-GL-000596014 for the policy period of 07/07/2005 to 07/07/2006. Coverage was afforded in the amount of \$1,000,000 each occurrence limit with a \$2,000,000 general aggregate limit and a \$2,000,000 products-completed operations aggregate limit, and was subject to the Commercial General Liability Coverage Form (CG0001-1204).

As you are aware, we were presented with copies of both an American Arbitration Association's Arbitration of Claims – Claimants' Original Complaint that was filed December 22, 2010 and Plaintiffs' Original Petition for Damages, Jury Demand and T.R.C.P. 194 Request for Disclosures filed June 19, 2011 in Harris County Texas as Cause No. 2011-42562 in the 152<sup>nd</sup> Judicial District Court.

The style of the arbitration is *Grier Patton and Camille Patton vs. Black Diamond Builders, L.L.P., f/k/a Black Diamond Builders, L.L.P., Bonner S. Ball, Individually, Thomas H. Zenner,*

MEMBER OF GREAT AMERICAN  
INSURANCE GROUP

**EXHIBIT**

J

Claim Number: 1304123

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*Individually, Rallin M. Welch, Individually, Michael Skoller, P.E., Individually, and National Structural Engineering, Inc., Dawson-Estes, Inc., Lawrence C. Estes, Jr., Individually, Richard P. Dawson, Individually, and Monarch Pools, Inc.*

*The style of the lawsuit is Grier Patton and Camille Patton vs. Bonner S. Ball, Individually, Thomas H. Zenner, Individually, Rallin M. Welch, Individually, Michael Skoller, P.E., Individually, and National Structural Engineering, Inc., Dawson-Estes, Inc., Lawrence C. Estes, Jr., Individually, Richard P. Dawson, Individually, and Monarch Pools, Inc.*

Based upon our review of the aforementioned Arbitration of Claims – Claimants’ Original Complaint and Plaintiffs’ Original Petition, the damages claimed and the nature of those damages, and your policy, we regret that we have to inform you that there is no duty to defend or indemnify as the cited damages involve the insured’s work, which is excluded by the modified Exclusion I. contained in Endorsement CG2294, which excludes such coverage. Therefore, Mid-Continent Casualty Company will not participate in or contribute towards any settlement, indemnification and/or defense of this claim on your behalf.

In an effort to better assist you in reviewing and understanding your policy’s coverage, we have provided you with a copy of the pertinent portions from your policy in the Addendum accompanying this letter.

Please direct your attention to the Insuring Agreement found in Coverage Form CG0001-1204 and note that it states “We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.”

Please now direct your attention to the Exclusions found in Coverage Form CG0001-1204 and note that the policy excludes coverage for work that is damaged, impaired, defective, deficient, inadequate, incomplete or otherwise in need of repair or replacement as indicated in policy Exclusions j.(4, 5 and 6 as modified by Endorsement ML1191), k., l.( as modified by Endorsement CG2294), m. and n.

The policy also excludes contractual liability for breach of contract and/or warranty issues under Exclusion b.

Finally, please direct your attention to the provided Endorsement ML1217, which excludes damage related to any fungus, mildew, mold or resulting allergens.

The above analysis constitutes the Company’s best effort to inform you of all of the factors of which we are currently aware of that may affect our ultimate responsibility to provide coverage and/or defense of any allegations made by the claimant in this case. By informing you of these issues, the Company does not waive any right that they may have under any policy of insurance

Claim Number: 1304123

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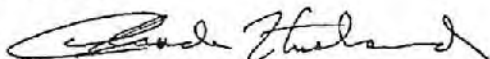
issued by it or under any state or common law. The Company expressly reserves any such rights.

Furthermore, the Company reserves the right to rely on other policy definitions, limitations, conditions, and/or exclusions in the event continued investigation, litigation and/or discovery give rise to other allegations or facts which are not covered under the policy.

If you are aware of any fact or theory that, in your opinion, is relevant to the duty to defend or indemnify under the policy, we welcome your thoughts and will give consideration to any information you may provide. Should you develop any information, that bears in any way upon coverage in this case, please bring it to our attention immediately so that we may determine if we should reconsider our position. Please also promptly furnish us with any copies of any subsequently filed amended petitions, or any other documentation that you may have received for our review and reconsideration.

If you have any questions regarding this letter, please do not hesitate to contact me at telephone number 800-841-3218, ext. 14 or email me at [claims@mcg-ins.com](mailto:claims@mcg-ins.com).

Sincerely,



Claude Husbands  
Claim Specialist

CTH: vjl

CC: Ms. Bonner Ball  
Black Diamond Builders Corp.  
750 Bering, Suite 130  
Houston, TX 77057

CC: David W. Medack, Esq.  
Heard & Medack P.C.  
9494 Southwest Freeway, Suite 700  
Houston, TX 77074

CC: Hotchkiss Insurance Agency, Inc.  
13105 NW Freeway, Suite 850  
Houston, TX 77040-6312

Claim Number: 1304123

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**ADDENDUM**

The basic Insuring Agreement under Coverage Form **CG0001-1204** of policy number **04-GL-000596014** for the policy period of 07/07/2005 to 07/07/2006 reads as follows:

**SECTION I – COVERAGES****COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

Claim Number: 1304123

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- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

In conjunction with this Insuring Agreement, the following definitions are applicable to coverage form **CG0001-1204**:

#### **SECTION V – DEFINITIONS**

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 17. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

The following Exclusions under Coverage Form **CG0001-1204**, and any modifying Endorsements to them within policy **04-GL-000596014** read as follows:

#### **2. Exclusions**

##### **b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

Claim Number: 1304123

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- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**ML 11 91 04 00**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**RESIDENTIAL CONTRACTOR EXTENSION A  
HOMEBUILDERS DIVISION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion j. of COVERAGE A (SECTION I) is hereby replaced by the following:

This insurance does not apply to:

**j. Damage To Property**

"Property damage" to:

- (4) Personal property in your care, custody or control, but this exclusion does not apply to liability assumed under a sidetrack agreement;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations. This exclusion does not apply to liability assumed under a sidetrack agreement; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it. This exclusion does not apply to liability assumed under a sidetrack agreement or to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**CG 22 94 10 01**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION – DAMAGE TO WORK PERFORMED BY  
SUBCONTRACTORS ON YOUR BEHALF**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion I. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**I. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

Claim Number: 1304123

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**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Policy 04-GL-000596014 contains the following Endorsement:

ML 12 17 04 01

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY  
FUNGUS, MILDEW AND MOLD EXCLUSION**

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal or advertising injury" or "medical payments" arising out of, resulting from, caused by, contributed to, attributed to, or in any way related to any fungus, mildew, mold or resulting allergens;
2. Any costs or expenses associated, in any way, with the abatement, mitigation, remediation, containment, detoxification, neutralization, monitoring, removal, disposal or any obligation to investigate or assess the presence or effects of any fungus, mildew, mold or resulting allergens; or
3. Any obligation to share with or repay any person, organization or entity, related in any way to items 1 and 2.


## CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED GRIER PATTON AND CAMILLE PATTON, PLAINTIFFS/JUDGMENT-CREDITORS AND  
DAVID A. FETTNER, PLAINTIFF/JUDGMENT-RECEIVER V. MID-CONTINENT CASUALTY  
COMPANY, DEFENDANT

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: Michael A. Hirsch Address: 109 N. Post Oak Lane, Suite 300 City/State/Zip: Houston, TX 77024 Signature:  Email: mhirsch@ssbplaw.com Telephone: 713.735.8583 Fax: 713.785.2091 State Bar No: 09718200		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): Grier Patton Camille Patton and David A. Fettner Defendant(s)/Respondent(s): Mid-Continent Casualty Company		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<b>Civil</b>			<b>Family Law</b>		
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability <input type="checkbox"/> List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____				
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax: _____	<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____				
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	

**4. Indicate damages sought (do not select if it is a family law case):**

- ☐ Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
- ☐ Less than \$100,000 and non-monetary relief
- ☐ Over \$100, 000 but not more than \$200,000
- ☐ Over \$200,000 but not more than \$1,000,000
- ☒ Over \$1,000,000

Rev 2/13

## CIVIL PROCESS REQUEST FORM

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING TO BE SERVED  
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Plaintiffs' Original Petition

FILE DATE OF MOTION: \_\_\_\_\_ Month/ \_\_\_\_\_ Day/ \_\_\_\_\_ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Mid-Continent Casualty Company

ADDRESS: 3100 South Gessner Road, Suite 600, Houston, Harris County, Texas 77063-3767

AGENT, (if applicable): Margaret A. Bounds

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☒ CONSTABLE  
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: \_\_\_\_\_ Phone: \_\_\_\_\_  
☐ MAIL ☐ CERTIFIED MAIL  
☐ PUBLICATION:  
Type of Publication: ☐ COURTHOUSE DOOR, or  
☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_  
☐ OTHER, explain \_\_\_\_\_

ATTENTION: Effective June 1, 2010

For all Services Provided by the DISTRICT CLERKS OFFICE requiring our office to MAIL something back to the Requesting Party, we require that the Requesting Party provide a Self-Addressed Stamped Envelope with sufficient postage for mail back. Thanks you,

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2. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: \_\_\_\_\_ Phone: \_\_\_\_\_  
☐ MAIL ☐ CERTIFIED MAIL  
☐ PUBLICATION:  
Type of Publication: ☐ COURTHOUSE DOOR, or  
☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_  
☐ OTHER, explain \_\_\_\_\_

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Michael A. Hirsch

TEXAS BAR NO./ID NO. 09718200

MAILING ADDRESS: Schlanger, Silver, Barg & Paine, L.L.P., 109 N. Post Oak Lane, Suite 300, Houston, TX 77024

PHONE NUMBER: 713-735-8583

FAX NUMBER: 713-785-2091

area code/phone number

area code/ fax number

EMAIL ADDRESS: mhirsch@ssbplaw.com